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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,321	10/03/2003	Herbert Andre Jansen	05015228-92US1 PTN/df	9461
20988	7590	06/23/2010		
OGILVY RENAULT LLP 1, Place Ville Marie SUITE 2500 MONTREAL, QC H3B 1R1 CANADA			EXAMINER BOLES, SAMEH RAAFAT	
			ART UNIT 3775	PAPER NUMBER
			MAIL DATE 06/23/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/677,321	Applicant(s) JANSEN ET AL.	
	Examiner SAMEH BOLES	Art Unit 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/8/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II in the reply filed on November 13, 2009 is acknowledged, accordingly, claims 1 and 2 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group I; claims 3-8 have been examined in this office action.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3-6, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US. Pat. No. 5171248) in view of Brosseau et al. (US. Pat. No. 6450978 B1).

Ellis teaches an apparatus for obtaining an axis of an intramedullary canal of an exposed bone (see modified figure 3 below) comprising: a stem portion (see modified figure 3 below) having a leading end insertable in an intramedullary canal of the bone through an opening in the bone, and being adapted to be handled by a following end thereof; and a tip portion (see modified figure 3 below) at the leading end of the stem portion, the tip portion being positionable in a determined way with respect to a surface of the intramedullary canal, the tip portion has two fingers (see modified figure 3 below) actuatable from the following end of the stem portion to extend radially from the stem portion to center the leading end of the stem portion in the intramedullary canal, wherein

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the fingers are pivotally mounted to one another, wherein the fingers are biased to be retracted radially, so as to facilitate an insertion of the stem portion in the intramedullary canal. The stem portion is graduated on an outer surface thereof to indicate a depth of insertion of the stem portion in the intramedullary canal (Fig. 3).

Ellis failed to teach a position tracking system in computer-assisted surgery including a detectable device trackable in space for position and orientation; reference points are calculable as a function of the position and orientation of the detectable device.

Brosseau teach a position tracking system in computer-assisted surgery including a detectable device trackable (42, Fig. 2) secured to a surgical device (20) in space for position and orientation; reference points (28 and 30) are calculable as a function of the position and orientation of the detectable device.

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify the system of Ellis with a detectable device trackable and reference points in view of Brosseau for effectively tracking the position and orientation of the device for define an axis of the intramedullary canal.

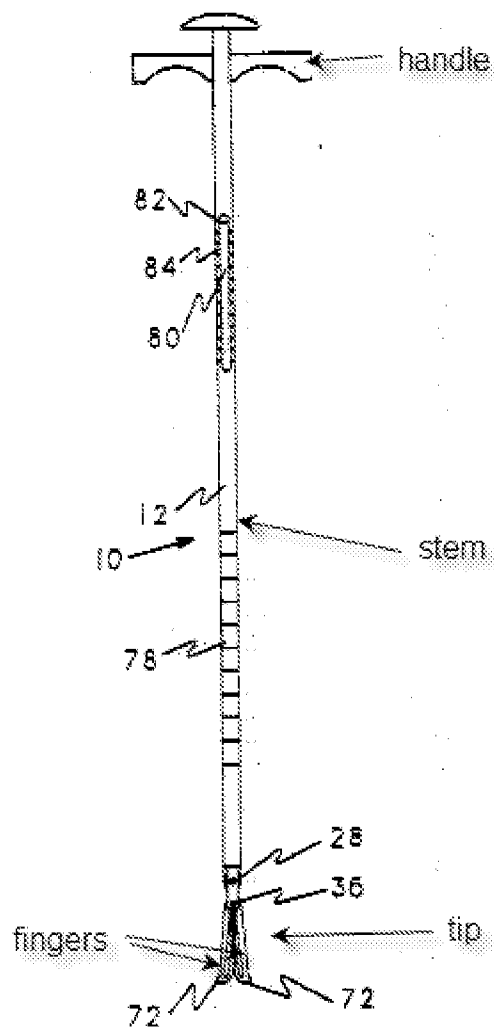


FIG. 3

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US. Pat. No. 5171248) in view of Brosseau et al. (US. Pat. No. 6450978 B1) and further in view of Kuslich et al. (US. pat. No. 6620162).

Ellis in view of Brosseau failed to teach a flared adapter slidably mounted on the stem portion, the flared adapter being flared toward the following end of the stem

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portion to engage with a surface of the intramedullary canal at the opening of the intramedullary canal, to center the stem portion in the intramedullary canal.

Kuslich teaches a flared adapter (100) slidably mounted on the stem portion (14), the flared adapter being flared toward the following end of the stem portion to engage with a surface of the intramedullary canal at the opening of the intramedullary canal (Fig. 5), to center the stem portion in the intramedullary canal and to control the insertion depth of the stem.

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify the stem of Ellis in view of Brosseau with a flared adapter in view of Kuslich for effectively centering the stem portion in the intramedullary canal and controlling the insertion depth of the stem.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMEH BOLES whose telephone number is (571)270-5537. The examiner can normally be reached on Monday - Friday 7:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Barrett can be reached on (571)272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SAMEH BOLES/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775